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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/804,226	03/19/2004	Jeff G. Greger	061270-0913	6083
22428	7590	06/29/2005	EXAMINER	
FOLEY AND LARDNER SUITE 500 3000 K STREET NW WASHINGTON, DC 20007			NGUYEN, KIEN T	
			ART UNIT	PAPER NUMBER
			3714	

DATE MAILED: 06/29/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/804,226	GREGER ET AL.
	<b>Examiner</b> Kien T. Nguyen	<b>Art Unit</b> 3714

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

**A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.**

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) Responsive to communication(s) filed on 14 April 2005.
- 2a) This action is **FINAL**.      2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) Claim(s) 1-27 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-6, 11, 14-22 and 25-27 is/are rejected.
- 7) Claim(s) 7-10, 12, 13, 23 and 24 is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date: _____
3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date <u>05/16/05</u>	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
	6) <input type="checkbox"/> Other: _____

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-5, 14, 19, 20 are rejected under 35 U.S.C. 102(b) as being anticipated by Mason U.S. Patent 266,492.

Mason disclosed a swing comprising a frame (tree branch); first and second hanger arms (E) rotatably coupled to the frame; a seat coupled to the first and second hanger arms; the frame includes first and second hanger mounts (two cables on tree branch) configured to removably receive the first and second hanger arms, respectively, so that the seat can be removed from the frame (applicant's claim 1); the first and second hanger arms (E) are pivotally coupled to the seat via member (j') (applicant's claim 2); the first and second arms are movable between a hanging position (Fig. 2), where the first and second hanger arms are positioned to engage the first and second hanger mounts, respectively, and a support position (Fig. 1) where the first and second hanger arms are positioned to support the seat on a support surface (ground); in the support position, each of the first and second hanger arms extends between the seat and the support surface, each of the first and second hanger arms has a curved portion to contact the support surface when the seat is in the support position (applicant's claims 3-5).

Claims 1, 6,11, 15-18, and 25 are rejected under 35 U.S.C. 102(b) as being anticipated by Sonner et al U.S. Patent 6,386,986.

Sonner et al disclosed a swing comprising a frame (200); first and second hanger arms (70a, 70b) (see Figs. 2 and 3) rotatably coupled to the frame; a seat (20) coupled to the first and second hanger arms; the frame including a first hanger mounts (270, 283) (see Fig. 8) to removably receive the first and second hanger arms, respectively so that the seat can be removed from the frame as shown in Figs. 2 and 3 (applicant's claim 1); Fig. 4B shows the underside of the seat has a curved portion (58a, 58b) (applicant's claim 6); Fig. 5 shows the hanger arms are movable between a hanging position (Fig. 1), and a carrying position where a portion of the first hanger arm is disposed adjacent a portion of the second hanger arm (applicant's claim 11); Figs. 9 and 10 show the first and second hanger mounts having a rib or detent member projecting from the mounts and configured to retain the respective hanger arm, and the first and second hanger arms having a recess configured to slidably engage the rib member as shown in Fig. 3 (applicant's claim 15-18) the frame (200) including a first leg (220a) and a second leg (220b), first and second housings (202, 204) coupled to the first and second legs; when the seat assembly is removed from the frame from the first and second hanger mounts, an area between the first and second frame components is open as shown in Fig. 8).

Claims 21 and 22 are rejected under 35 U.S.C. 102(b) as being anticipated by Pinch U.S. Patent 6,059,667.

Pinch disclosed a swing comprising a frame (12) having first and second legs (20); first and second housings (17, 19) coupled to the first and second legs, respectively; a battery pack (534) to house batteries (536) inherently removably mounted to one of the first and second housing; a seat (12) to be configured to be suspended from the frame; Fig. 3 shows an inboard side of the housing including a first opening and an outboard side of the housing including a second opening.

Claims 26 and 27 are rejected under 35 U.S.C. 102(b) as being anticipated by EP1360917 ('917).

EP ('917) disclosed a swing comprising a frame (23b); a seat (1) suspended from the frame by at least one hanger arm (11), the seat and hanger arm being removable from the frame, a motor mechanism (31) to drive the swing motion of the seat, the seat has an underside; the hanger arm comprises first (left) and second (right) hanger arms.

#### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 19 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mason in view of Nix U.S. Patent 743,546.

It is noted that Mason failed to teach the use of the hanger mounts as being a hook with U-shape as set forth in claims 19 and 20. However, Nix teaches a swing having a frame (9) with first and second hanger mounts (hook) with U-shaped to define a channel to receive the respective hanger arm (8). Therefore, it would have been obvious to one of ordinary skill in the art to modify the hanger mounts of Mason with the hook as taught by Nix for the advantage of enhancing the rigidity of the hanger mounts.

***Allowable Subject Matter***

Claims 7-10, 12, 13, 23, and 24 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Response to Arguments***

In response to applicant's argument that Mason failed to teach the seat is configured to be placed on a support surface while remains in the seat and maintains the same configuration when suspended from the frame and when placed on the support frame, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. In a claim drawn to a process of making, the intended use must result in a manipulative difference as compared to the prior art. See *In re Casey*, 370 F.2d 576, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 312 F.2d 937, 939, 136 USPQ 458, 459 (CCPA 1963).

Applicant's arguments with respect to claim 21 have been considered but are moot in view of the new ground(s) of rejection.

***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kien T. Nguyen whose telephone number is (571) 272-4428. The examiner can normally be reached on 7:30 AM-5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jessica Harrison can be reached on (571) 272-4449. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Art Unit: 3714

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Kien T. Nguyen  
Primary Examiner  
Art Unit 3714

Ktn